

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3620 OF 2004

IN

SUIT NO.4013 OF 1999

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PuranBansi Holdings Pvt.Ltd. ...Plaintiff

v/s.

Panchmal Cement Company Ltd. ...Defendant

...

Ms.Sheela Balsari for the Plaintiff.

Mr.Vivek Sharma for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 2ND DECEMBER, 2005

P.C.:

1. This Notice of Motion is taken out by the Defendants for setting aside the decree passed

against them in a summary suit, because the Defendants were not appearing after the service of writ of summons. In the affidavit filed in support of the notice of motion, a vague statement is made that their office where the writ of summons was served was with the Court Receiver at the relevant time and therefore the Defendants/company did not receive the writ of summons. There is an affidavit in reply filed by the Plaintiff disputing these allegations. It is pertinent to note that no document is produced by the Defendants to show that at the relevant time the office premises were in possession of the court receiver. According to affidavit of the Plaintiff, writ of summons was served on the company and it has been received by the company. An affidavit has been filed by an employee of the Sheriff office proves service of writ of summons. Defendants have neither referred to that affidavit and have not stated that the averment made in the affidavit of the employee from the Sheriff office is incorrect. It appears from the detailed affidavit filed on behalf of the Plaintiff that the Defendants are merely trying to avoid execution of the decree. This Notice of Motion is also a step in that direction. Notice of Motion is, therefore,

disposed of.

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